

**THE PROPOSED MODEL NO FAULT LIABILITY SCHEME FOR MOTOR VEHICLE
ACCIDENT CLAIMS IN MALAYSIA**



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“SELAMAT MENJALANKAN PENYELIDIKAN DENGAN JAYANYA”

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5. Report

5.1 Proposed Executive Summary

1. In Malaysian law, liability must be established before the plaintiff victim can be compensated for the injuries he sustained as a consequence of the defendant wrongdoer's fault. In respect of claim for personal injury and death due to motor vehicle accident, the plaintiff victim or dependants of the victim needs to overcome the substantive law as well as the procedural law inherent in the tort liability or fault liability system.

2. A Proposal of No-Fault Liability Scheme was propounded by the late Tan Sri Harun Hashim SCJ in 1995 to prevent delays in payments to those injured because of the requirement of proving fault. He suggested the establishment of the Motor Accident Compensation Fund to administer and fund the Scheme similar to SOCSO. However, there was no detailed framework on the implementation of the Scheme. He was merely making a suggestion and no attempts were made thereafter to carry out the implementation of the Scheme following his suggestion.

3. An Advocate and Solicitor, Kandiah Chelliah in his article "Should the award of damages be controlled in order to prevent the increase of insurance premium?" in INSAF (1998) called for the implementation of the Scheme by insurance companies to dispel their fear of decreasing earnings or motor insurance being an unprofitable business. In this article, the writer did not elaborate on the process of implementation of the Scheme but what he did was just gloss through the various methods of overcoming the problems faced by insurance companies. In another article by the same writer in 1995 entitled "The need for an Accident Claims Court/Tribunal for Fatal/Personal Injury Claims", here the writer was merely suggesting the establishment of a special court dealing only with accident claims.

4. In August last year, after a spell of years of accidents being reported in the media and on the rise every year, the Attorney General proposed that the No-Fault liability Scheme be introduced. Sometime in October 2007, the Reform Department of the Attorney General's Chambers called for the formation of a working committee to look into the proposal of implementing the No-Fault Liability Scheme. The Working Committee comprises of Bar Council members, representatives of the various insurance companies, PIAM, RTD, PERKESO, Police and two academicians, Prof. Mehrun Siraj (IIUM) and Norila Abu Hassan (UiTM). The Working Committee has not been able to draft a model scheme in view of the objections raised by the Bar Council and some Lawyers on the success of the Scheme. Therefore, this research is pertinent as all the various aspects of the difficulties raised can be studied so that a suitable proposed model can be framed which is beneficial to Malaysia.

5.3 Introduction

Faultless or at fault, every year the number of those injured rises despite many attempts made by the authorities to curb the toll of motor vehicle accidents. As the consequence of the economic growth in Malaysia and the production of the national car, many can own vehicles thus contributing to the rise in the usage of the major roads in Malaysia. The population increase in Malaysia has led to an increase in vehicle ownership reflective of the growing affluence of the people due to the country's economic progress and prosperity. With the increase in the number of cars, road accidents too are on the rise especially during the months of Malaysian festivals and public holidays where there is an exodus of the urban population to their rural homes. Despite the various attempts made by the Police (OPS SIKAP IX-XXII) from December 2001 to February 2011, the number of accidents has swung upwards from 13442 to 17288 (Perakaaan Kemalangan Jalan Raya Musim Perayaan Ops Sikap 1-23 2001-2011). Most of the fatalities involved motorcyclists and their pillion riders, motorists and lately public transport (express buses) users.

The system applicable in Malaysia is the tort liability system and most motor vehicle accidents are based on negligence as a cause of action. Negligence forms the basis for compensation where the law imposes liability on individuals responsible regardless of whether the harmful act was intentional or unintentional. The main concern was causation, i.e. the connection between the plaintiff's injury and the defendant's act. For the purpose of proving negligence, "reasonable care" is the degree of care that a reasonable person would have taken in all the circumstances of the case. This standard does not usually take into account the personal characteristics of the particular defendant, such as inexperience or physical disability. Thus a person who has acted to the best of his or her ability may be adjudged as negligent if the conduct fails to measure up to the standard expected of a reasonable person. But an accident victim who is unable to establish that the accident was caused by the defendant's negligence is not entitled to common law damages, even though he or she may not be blame for the accident. Thus, the common law negligence action denied compensation to those who could not prove that the injury had been caused by a defendant's failure to take reasonable care.

A motor vehicle accident claim emanates in the Sessions Court which takes about two to three years to dispose of notwithstanding whether it is settled amicably or completed subsequent to a hearing. If there is an appeal and goes up to the apex court (Court of Appeal), there will be further delay to settlement. It was also noted that some cases are still pending in court for up to 10 to 12 years after being registered (Sukatno v Lee Seng Kee (2009)-took 13 years to settle). Attempts have been made by the Malaysian judiciary to dispose of cases as speedily as possible by appointing new Judges, Judicial Commissioners and Session Judges.

It has been said that the government delivery system also is a contributing factor in the delay to settle claims for damages. The process of getting the Police Investigating Officer (IO) report and sketch plan seemed to be a task as police investigation takes time and causes delay. To